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18 Fujian Jinhua Integrated Circuit Co., Ltd.

19
20 **UNITED STATES DISTRICT COURT**
21
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 MICRON TECHNOLOGY, INC.,

24 Plaintiff,
25 v.

26 UNITED MICROELECTRONICS
27 CORPORATION, FUJIAN JINHUA
28 INTEGRATED CIRCUIT CO., LTD.,
and DOES 1-10,

Defendants.

Case No. 3:17-cv-6932-MMC

**DEFENDANT FUJIAN JINHUA
INTEGRATED CIRCUIT CO., LTD.'S
NOTICE OF MOTION AND MOTION
TO DISMISS FOR INSUFFICIENT
SERVICE OF PROCESS AND FOR
LACK OF PERSONAL JURISDICTION**

Judge: Honorable Maxine M. Chesney
Courtroom: 7, 19th Floor
(Proposed) Hearing Date: November 9, 2018
(Proposed) Hearing Time: 9:00 AM

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on November 9, 2018, at 9:00 am, or as soon thereafter as the matter may be heard before the Honorable Maxine M. Chesney, United States District Court Judge, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Courtroom 7, 19th Floor, Defendant Fujian Jinhua Integrated Circuit Co., Ltd. (“Jinhua”) will and hereby does move to dismiss the Complaint filed on December 5, 2017 by Plaintiff Micron Technology, Inc. (“Micron”), pursuant to Federal Rules of Civil Procedure (“FRCP”) 12(b)(2) and 12(b)(5) for lack of personal jurisdiction and insufficient service of process. For the reasons set forth below, Jinhua respectfully requests this court to dismiss the Complaint for lack of personal jurisdiction with prejudice and for insufficient service of process without prejudice.

This motion is based on this notice of motion, and the following memorandum of points and authorities, the exhibits filed herewith, including the declarations of Jinfu Zheng and Yongdong Xu, all pleadings and papers filed herein, and any argument of counsel or other matter as the Court may allow.

DATED: October 2, 2018

DAN JOHNSON LAW GROUP, LLP

By: /s/ Daniel Johnson Jr.

Daniel Johnson, Jr.

Attorneys for Defendant
FUJIAN JINHUA INTEGRATED CIRCUIT
CO., LTD.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

A. SERVICE OF PROCESS

Fujian Jinhua Integrated Circuit Co., Ltd. (“Jinhua”) is a state-owned enterprise in the People’s Republic of China, which has been a signatory to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (“Hague Convention”) for over 25 years. Rather than utilizing the Hague Convention to serve Jinhua, Micron attempted to circumvent China’s Convention procedures by sending Federal Express (“FedEx”) packages to Jinhua’s President, Stephen Chen (“Chen”) at his Taiwan residence and at United Microelectronics Corporation’s (“UMC”) business address in Taiwan, without requesting permission to serve via alternative means. Micron’s unilateral attempt at service must fail because, as a Chinese state-owned enterprise, Jinhua has the right to receive proper service under China’s Convention procedures, and China has expressly objected to service by postal channels under Article 10(a) of the Hague Convention.

Moreover, both Chinese and Taiwanese laws prohibit service unless performed by a domestic court official. As such, Micron's attempt complies with neither the Hague Convention nor any foreign country law relevant to this case. Because Micron failed to serve Jinhua under any applicable paragraph of FRCP 4, Micron's Complaint should be dismissed without prejudice for insufficient service of process.

B. PERSONAL JURISDICTION

Micron’s Complaint should be dismissed with prejudice pursuant to FRCP 12(b)(2) because neither general nor specific personal jurisdiction applies over Jinhua. First, Jinhua does not have any general contacts with California, much less anywhere else in the United States. As set forth in more detail below, Jinhua is a state-owned enterprise controlled by Fujian Province and located in Mainland China. Jinhua has not purposely done any business in the state of California, has not actively or constructively been licensed to do business in California, does not have a registered agent authorized to accept service on its behalf in California and does not make, sell, import, market or promote any

1 product in California. Moreover, Jinhua does not own, rent, lease or possess any real or personal
 2 property in California, does not maintain any bank accounts in California, does not pay taxes in
 3 California, does not maintain employees, officers, directors, or representatives in California, does not
 4 maintain manufacturing or sales facilities in California, and does not have any shareholders or
 5 members residing in California. Lastly, Jinhua does not maintain a physical address, mailing
 6 addresses, telephone numbers or fax numbers in California, does not travel to California by way of
 7 salespersons, and does not visit potential customers in California.

8 Jinhua also does not have any specific contacts with California related to this case. Micron's
 9 only claim that this Court has specific personal jurisdiction over Jinhua is Jinhua's attendance at the
 10 Chinese American Semiconductor Professional Association ("CASPA") job fair in California in
 11 2016. This one event is insufficient to establish specific personal jurisdiction because the CASPA
 12 job fair was a one-time event, with only two representatives from Jinhua in attendance. Jinhua only
 13 attended the CASPA job fair to attract Chinese students with prior experience in DRAM technology.
 14 Moreover, Micron's claims do not "arise out of or relate to" Jinhua's attendance at the job fair because
 15 Jinhua's participation in the CASPA event has no relation whatsoever to the trade secret
 16 misappropriation and RICO claims in the Complaint. Ultimately, Micron did not suffer any injury
 17 arising out of Jinhua's attendance at the CASPA job fair because Micron employees were not the
 18 target of Jinhua's job efforts there, no Micron employees applied for jobs at Jinhua at the event and
 19 no Micron employees were hired as a result of the event. Moreover, Chen was a UMC employee
 20 acting on behalf of UMC, rather than Jinhua, and did not speak to any Micron employees at the job
 21 fair, and received no inquiries from Micron employees in response to the job fair.

22 Lastly, specific jurisdiction over Jinhua in this case would be unreasonable, and therefore,
 23 unconstitutional, because Jinhua did not purposefully interject itself into California or into the U.S.
 24 market. Additionally, it would be significantly burdensome for Jinhua to defend this action because
 25 California is more than six-thousand (6,000) miles away from China and this Court's exercise of
 26 jurisdiction in California would conflict with the sovereignty of China. Moreover, California has no
 27 interest in the dispute because Micron is a Delaware corporation based in Idaho and Jinhua is non-
 28 US corporation based in China. Micron obviously has more appropriate forums available to it which

1 would have a greater interest in resolving the dispute, such as Taiwan or China. Given this, there is
 2 simply no benefit to have the matter adjudicated in California where little to no aspect of the
 3 controversy took place. California will also not provide the litigants with better access to proof and
 4 will not result in a more efficient resolution of the case because most, if not all of the Jinhua witnesses
 5 and the evidence are located in China. China, or even Taiwan, is a more convenient forum for Micron
 6 to bring its claims against Jinhua.

7 **II. RELEVANT FACTS**

8 **A. SERVICE OF PROCESS**

9 Jinhua is a limited liability corporation in China, which is a signatory to the Hague
 10 Convention. Declaration of Jinfu Zheng filed herewith (“Zheng Decl.”), ¶3; Declaration of Yongdong
 11 Xu filed herewith (“Xu Decl.”), ¶5. Jinhua is controlled by Fujian Province, and its principal place
 12 of business is located at No.88, Lianhua Avenue, Integrated Circuit Science Park, Jinjiang City,
 13 Quanzhou City, Fujian Province, China. Zheng Decl., ¶¶3-5. On January 10, 2018, Micron initiated
 14 service on Jinhua pursuant to China’s Convention procedures under the Hague Convention. Dkt. 13;
 15 Zheng Decl., ¶6. To date, Micron has not demonstrated that its attempt to serve Jinhua under the
 16 Hague Convention is futile.

17 On September 3, 2018, Chen, the President of Jinhua and a Vice President of UMC, received
 18 two packages via FedEx in Taiwan, one at his personal address and the other at UMC’s business
 19 address. Zheng Decl., ¶¶ 23-24; Dkt. 96; Dkt. 97. These packages contained only English language
 20 documents and were sent by the Clerk of the Court purportedly pursuant to FRCP 4(f)(2)(C)(ii).
 21 Zheng Decl., ¶25. Micron now asserts that Jinhua was properly served even though Micron did not
 22 effect service via the Hague Convention, did not ask for permission to use alternative service under
 23 FRCP 4(f)(3), and did not comply with foreign laws.

24 **B. PERSONAL JURISDICTION**

25 Micron filed its Complaint on December 5, 2017 alleging trade secret misappropriation and
 26 RICO claims against Jinhua. Micron is a Delaware corporation headquartered in Boise, Idaho.
 27 Complaint ¶5. Jinhua is a state-owned limited liability corporation founded in Mainland China in
 28 early 2016 and ultimately controlled by Fujian Province. Zheng Decl., ¶¶3, 4. Jinhua’s principal

1 place of business located at No. 88, Lianhua Avenue, Integrated Circuit Science Park, Jinjiang City,
 2 Quanzhou City, Fujian Province, China, 362200. *Id.*, ¶5. Jinhua does not have any general contacts
 3 with California. Jinhua has not purposely done any business in California, or anywhere in the United
 4 States, has not actively or constructively been licensed to do business in California, or anywhere in
 5 the United States, and does not have a registered agent authorized to accept service on its behalf in
 6 California, or anywhere in the United States. *Id.*, ¶¶7-9. Jinhua does not make, sell, import, market,
 7 or promote any product in California, or anywhere in the United States, does not own, rent, lease,
 8 possess or control any assets, real or personal, in California, or anywhere in the United States – all
 9 real and personal property owned, rented, leased, possessed or controlled by Jinhua is located in
 10 Mainland China. *Id.*, ¶¶10-12.

11 Additionally, Jinhua does not maintain bank accounts in California, or anywhere in the United
 12 States, has no employees, officers, directors or representatives in California, or anywhere in the
 13 United States, has no manufacturing or sales facilities in California, or anywhere in the United States,
 14 and does not have any shareholders or members residing in California. *Id.*, ¶¶13-16. Additionally,
 15 Jinhua has no physical address, phone or fax listings in California, or anywhere in the United States,
 16 does not travel to California, or anywhere in the United States, by way of salespersons, does not pay
 17 taxes in California, or anywhere in the United States, and does not visit potential customers in
 18 California, or anywhere in the United States. *Id.*, ¶¶17-20.

19 Apart from the lack of general contacts with California, Jinhua also does not have any
 20 connections specific to Micron's claims. Micron's only claim that this Court has specific personal
 21 jurisdiction over Jinhua is based on one isolated event: Jinhua's attendance at a job fair hosted by
 22 CASPA in October 2016 in Santa Clara, California and posting of a job opening on the CASPA
 23 website. Complaint, ¶¶17, 35. That job fair was focused on attracting Chinese students with prior
 24 experience in DRAM technology. Zheng Decl., ¶27. Micron employees were not the target of
 25 Jinhua's job efforts. *Id.* Only two Jinhua employees participated in the job fair. *Id.*, ¶29. Moreover,
 26 although Chen is the President of Jinhua as well as the Vice President of UMC, Chen was not Jinhua's
 27 employee during the job fair – he joined Jinhua in January 2017. *Id.*, ¶¶21, 28.

Neither UMC nor Jinhua received any resumes from Micron employees prior to the event and no Micron employees applied for jobs at Jinhua at the job fair. *Id.* ¶30, 31. Chen, acting on behalf of UMC, did not speak to any Micron employees at that event, and received no inquiries from Micron employees in response to its involvement with CASPA. *Id.* ¶30. Jinhua did not hire anyone, including anyone from Micron, as a result of the job fair or the job posting. *Id.* ¶¶32, 35. Jinhua's participation in the 2016 job fair represents Jinhua's only trip to California. *Id.* ¶33. Except for the job openings post on the CASPA website, Jinhua has not made other advertisements in California, or anywhere in the United States. *Id.* ¶34. Jinhua has not been a party to any litigation in the United States other than Micron's lawsuit comprising the instant case. *Id.* ¶35.

III. LEGAL STANDARDS

A. SERVICE OF PROCESS

FRCP 4 "governs service of process in federal district court." *Brockmeyer v. May*, 383 F.3d 798, 800 (9th Cir. 2004). If a return of service is produced, the moving party should include "affidavits, discovery materials, or other admissible evidence establishing the lack of proper service" in its motion to dismiss. *Emine Tech. Co. v. Aten Int'l Co.*, 2008 U.S. Dist. LEXIS 95136, at *4 (N.D. Cal. Nov. 21, 2008). "In response, the [P]laintiff must provide evidence showing that the service was proper, or creating an issue of fact requiring an evidentiary hearing to resolve." *Id.*

Under FRCP 4(h), a foreign corporation must be served pursuant to the "manner[s] prescribed by FRCP 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)." Specifically, FRCP 4(f)(1) allows service "by any internationally agreed means of service that is reasonably calculated to give notice," including the means provided in the Hague Convention. FRCP 4(f)(2) applies "if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice." Finally, FRCP 4(f)(3) allows service "by other means not prohibited by international agreement, as the court orders."

Where the Hague Convention applies, service may be made pursuant to either FRCP 4(f)(1) or FRCP 4(f)(3). *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988); FRCP 4 advisory committee's note to 1993 amendment ("Use of the Convention procedures, when available, is mandatory if documents must be transmitted abroad to effect service."); *see also*

1 *Brockmeyer*, 383 F.3d at 804 (finding that “[FRCP] 4(f)(1) authorizes service by those methods of
 2 service authorized by international agreements, including the Hague Convention”); *Rio Props. v. Rio*
 3 *Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002) (“As obvious from its plain language, service
 4 under FRCP 4(f)(3) must be (1) directed by the court; and (2) not prohibited by international
 5 agreement.”).¹ Since 1991, China has been a signatory to the Hague Convention and has expressly
 6 objected to service by postal channels under Article 10(a) of the treaty. Xu Decl., ¶¶5, 7.

7 The Supreme Court recently determined that service by postal channels is permitted under the
 8 Hague Convention when: (1) “the receiving state has not objected to service by mail”; and (2) “service
 9 by mail is authorized under otherwise-applicable law.” *Water Splash Inc. v. Menon*, 137 S. Ct. 1504,
 10 1511 (2017). Under the Hague Convention, sending documents by private couriers, including FedEx,
 11 are considered “postal channels” in this district. *See Willamette Green Innovation Ctr., LLC v.*
 12 *Quartis Capital Partners*, 2014 U.S. Dist. LEXIS 148665, at *12 (N.D. Cal. Jan. 21, 2014).

13 **B. PERSONAL JURISDICTION**

14 The plaintiff bears the burden of providing that the court may exercise personal jurisdiction
 15 over a defendant when the defendant moves to dismiss under FRCP 12(b)(2). *Pebble Beach Co. v.*
 16 *Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Courts properly exercise personal jurisdiction over a
 17 defendant “if it is permitted by a long-arm statute and if the exercise of jurisdiction does not violate
 18 federal due process.” *Id.* at 1154. In California, a court “may exercise jurisdiction on any basis not
 19 inconsistent with the Constitution of this state or of the United States.” Cal. Civ. Proc. Code § 410.10;
 20 *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 753, 187 L. Ed. 2d 624 (2014) (“California’s
 21 long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the
 22

23

24 ¹ Unlike the defendant in *Rio Props.*, Jinhua does not argue that “[FRCP] 4(f) should be read to create
 25 a hierarchy of preferred methods of service of process.” 284 F.3d at 1014-15. Rather, Jinhua
 26 maintains that where service proceeds under the Hague Convention, FRCP 4(f)(1) applies *unless* the
 27 court grants alternative service under FRCP 4(f)(3). Even then, service under FRCP 4(f)(3) must “not
 28 [be] prohibited by international agreement.” *Id.* at 1014. Because courts may grant alternative service
 under FRCP 4(f)(3), there is no reason for FRCP 4(f)(2) to apply. As provided in the advisory
 committee’s notes, FRCP 4(f)(2) “provides alternative methods for use when internationally agreed
 methods are not intended to be exclusive, or where there is no international agreement applicable.”
 See FRCP 4 advisory committee’s note to 1993 amendment. Here, neither is the case.

1 U.S. Constitution.”). As such, “the jurisdictional analyses under state law and federal due process are
 2 the same.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

3 “The basic federal rule is that the defendant must have certain minimum contacts with the
 4 forum such that the maintenance of the suit does not offend traditional notions of fair play and
 5 substantial justice.” *Flynt Distributing Co. v. Harvey*, 734 F.2d 1389, 1392 (9th Cir. 1984). Personal
 6 jurisdiction may be either general or specific. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223
 7 F.3d 1082, 1086 (9th Cir. 2000). For general jurisdiction, courts “employ[] a three-prong test to
 8 determine whether a party has sufficient minimum contacts to be susceptible to specific personal
 9 jurisdiction.” *Brayton Purcell LLP v. Recordon*, 575 F.3d 981, 985 (9th Cir. 2009). General
 10 jurisdiction is satisfied if a defendant whose contacts with a state are “substantial” or “continuous and
 11 systematic.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415, 80 L. Ed. 2d
 12 404, 104 S. Ct. 1868 (1984). The standard for establishing general jurisdiction is “fairly high,” *Brand*
 13 *v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986), and requires the defendant’s contacts to
 14 approximate physical presence. *Gates Lear Jet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984).
 15 Courts also consider whether the defendant makes sales, solicits or engages in business in the state,
 16 serves the state’s markets, designates an agent for service of process, or is incorporated there. *Hirsch*
 17 *v. Blue Cross, Blue Shield of Kansas City*, 800 F.2d 1474, 1478 (9th Cir. 1986).

18 In determining whether to exercise specific jurisdiction, courts consider whether “(1) the
 19 defendant has performed some act or consummated some transaction within the forum or otherwise
 20 purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim
 21 arises out of or results from the defendant’s forum-related activities, and (3) the exercise of jurisdiction
 22 is reasonable.” *Bancroft & Masters, Inc.*, 223 F.3d at 1086. Evaluating the reasonableness of
 23 exercising specific personal jurisdiction depends on: (1) the extent of the defendant’s purposeful
 24 injection into the forum; (2) the defendant’s burdens from litigating in the form; (3) the extent of
 25 conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the
 26 dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum
 27 to the plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative
 28 forum. *Ziegler v. Indian River County*, 64 F. 3d 470, 474-75 (9th Cir. 1995).

1 **IV. ARGUMENT**

2 **A. INSUFFICIENT SERVICE OF PROCESS (FRCP (b)(5))**

3 Micron's unilateral attempt to serve Jinhua, a Chinese state-owned enterprise, under FRCP
 4 4(f)(2)(C)(ii) is improper because China is a signatory to the Hague Convention and has objected to
 5 service by postal channels under Article 10(a). Micron did not request permission for alternative
 6 service upon Jinhua's executive at his Taiwanese residence or UMC's business address in Taiwan.
 7 Even if Micron had requested permission, service by private courier is improper because China does
 8 not allow service by postal channels, and any means provided under FRCP 4(f)(3) must not be
 9 prohibited by international agreement. Even under FRCP 4(f)(2), Micron's attempted service fails
 10 because both China and Taiwan require service to be performed by a domestic court official. For
 11 these reasons, Micron's attempt to serve Jinhua via FedEx fails.

12 **1. Service Should Be Governed By FRCP 4(f)(1) Because China Is A
 Signatory To The Hague Convention**

13 It is well-established that China is a signatory to the Hague Convention and, as a result, FRCP
 14 4(f)(1) governs service unless alternative service is granted under FRCP 4(f)(3). Xu Decl., ¶¶4, 5, 7;
 15 *see also Volkswagenwerk Aktiengesellschaft*, 486 U.S. at 705; FRCP 4 advisory committee's note to
 16 1993 amendment. Micron plainly recognizes that the Hague Convention applies since Micron
 17 initiated service under China's Convention procedures at the outset of this case. Dkt. 13. Rather than
 18 exploring options to perfect that service, Micron attempts to invent a new way to serve Chinese
 19 defendants that apparently does not even require a court order: sending FedEx packages directly to a
 20 Jinhua executive in Taiwan.

21 Such tactics blatantly ignore China's express objection to service by postal channels under
 22 Article 10(a) of the Hague Convention and, if upheld, would effectively trample the meaning of
 23 China's Convention procedures, which have been recognized and upheld by foreign courts for over
 24 25 years.² Xu Decl., ¶¶5, 7; *see Willamette Green Innovation Ctr., LLC*, 2014 U.S. Dist. LEXIS

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 26 ² At a bare minimum, China also requires documents to be in Chinese or translated into Chinese to
 27 comply with the Hague Convention. *See* Declaration of Mario Moore ("Moore Decl."), Ex. A (stating
 28 that "service requested within the meaning of Art. 5(1) of the Convention requires that all documents
 and evidence to be served must be written in Chinese or that a translation in Chinese be attached
 thereto"). Here, Micron has failed to comply with even this basic requirement, thus exhibiting a clear
 disregard for China's Convention procedures.

1 148665, at *12 (finding “that private couriers, such as FedEx, come within the meaning of ‘postal
 2 channels’ under the Hague Convention”); *see also Water Splash Inc.*, 137 S. Ct. at 1512 (noting that
 3 the Supreme Court “give[s] ‘considerable weight’ to the views of other parties to a treaty”). To date,
 4 Jinhua has not been served via China’s Convention procedures even though China intended for
 5 foreign parties to serve Chinese defendants under these procedures. Zheng Decl., ¶6; Xu Decl., ¶¶5,
 6 Dkt. 96; Dkt. 97. Because China is a signatory to the Hague Convention and Micron has never
 7 asked for permission to serve Jinhua via alternative means, Micron’s attempted service should be
 8 found ineffective.

9 **2. If Micron Seeks To Use Alternative Methods Of Service, Micron
 Should Have At Least Obtained A Court Order**

10 Micron may argue that alternative service is available under FRCP 4(f)(3), and as a result, it
 11 is not required to follow the procedures for service under FRCP 4(f)(1). Service of process under
 12 FRCP 4(f)(3) is not a “last resort” and requires, at a bare minimum, that Micron obtain permission
 13 for alternative service. *See Rio Props.*, 284 F.3d at 1014-15. Micron, however, did not even ask.

14 Moreover, Micron’s argument fails in both theory and execution. First, where the Hague
 15 Convention applies, courts have found that alternative service is permitted on a limited basis, such as
 16 “where the defendant’s foreign address is unknown; the defendant has successfully evaded service;
 17 failure to permit alternate service will result in unduly long delays in litigation; or where attempted
 18 Hague Convention service has failed.” *Int’l Designs Corp., LLC v. Qingdao Seaforest Hair Prods.*
 19 *Co., Ltd.*, 2018 U.S. Dist. LEXIS 3038, at *8-9 (S.D. Fla. Jan. 4, 2018); *see also Codigo Music, LLC*
 20 *v. Televisa, S.A. de C.V.*, 2017 U.S. Dist. LEXIS 160747, at *27-28 (S.D. Fla. Sept. 29, 2017) (finding
 21 that Plaintiffs’ “concern that no subsequent attempts at service under the Hague Convention will be
 22 successful” does not demonstrate “that particular available method of service is unduly burdensome
 23 or futile”); *South Carolina v. Hitachi Displays, Ltd.*, 2013 U.S. Dist. LEXIS 117518, at *7-8 (D.S.C.
 24 Aug. 20, 2013) (denying alternative service under FRCP 4(f)(3) because “Japan is a signatory to the
 25 Hague Service Convention, which provides South Carolina with an international process for
 26 effectuation service,” and the party’s “correct address in Japan is readily obtainable”).

1 Here, Jinhua's China address is publicly available. *See* Moore Decl., Ex. B. Micron cannot
 2 demonstrate that Jinhua has ever attempted to evade service. Moreover, Micron attempted to serve
 3 Jinhua via the Hague Convention at the outset of this case, but has yet to show how doing so would
 4 be unduly burdensome or futile. To the extent that Micron believes that alternative service is required
 5 to prevent "unduly long delays in litigation," Micron should have filed a motion with the court to seek
 6 appropriate ways to resolve this issue rather than act on its own initiative. Given this, Micron is not
 7 entitled to alternative service under FRCP 4(f)(3).

8 Second, even if alternative service is permitted, Micron failed to acknowledge that China has
 9 expressly objected to service by postal channels via Article 10(a) of the Hague Convention. Xu Decl.,
 10 ¶7. As a result, attempting to serve Jinhua via FedEx violates China's Convention procedures.
 11 *Intercontinental Indus. Corp. v. Qingquan Luo*, 2011 U.S. Dist. LEXIS 9081, at *7-8 (C.D. Cal. Jan.
 12 20, 2011) ("In light of China's objection to service by postal channels, the Permanent Bureau's
 13 position that private couriers should be treated as postal channels under the Hague Convention, and
 14 other courts' treatment of private couriers as postal channels, the Court cannot authorize service to
 15 Luo through a commercial carrier pursuant to 4(f)(3) as it is prohibited by international agreement").

16 Micron may also assert that service could be made upon Jinhua's counsel. This too is
 17 improper, because counsel is allowed to enter appearances to dispute service without "waiv[ing] any
 18 arguments regarding service or that Defendants have been served." *See Fourte Int'l Ltd. BVI v. Pin*
 19 *Shine Indus. Co.*, 2018 U.S. Dist. LEXIS 62367, at *4-5 (S.D. Cal. April 11, 2018). Moreover, the
 20 fact that "the requested alternative methods of service are the most efficient and effective methods of
 21 service" does not justify alternative means when service via the Hague Convention remains viable.
 22 *Id.* at *5-6. Here, Jinhua should not have to forfeit its rights to proper service because Micron made
 23 an improper attempt to serve Jinhua, especially since Micron acted without a court order and has no
 24 legitimate reason for serving Jinhua via a private courier upon a Jinhua executive in Taiwan. Thus,
 25 Jinhua should not be forced to accept service through counsel.

26 **3. Micron's Attempted Service is Prohibited by Chinese Law**

27 In any event, Micron should not be allowed to serve Jinhua under FRCP 4(f)(2) because China
 28 is a signatory to the Hague Convention, and as a result, an "internationally agreed means" for service

1 is available. As provided in the advisory committee's notes, FRCP 4(f)(2) applies "when
 2 internationally agreed methods are not intended to be exclusive, or where there is no international
 3 agreement applicable." Here, neither is the case, as China is a signatory to the Hague Convention
 4 and intended for foreign parties to utilize the Hague Convention's procedures for service.³ Xu Decl.,
 5 ¶¶5, 7. As such, Micron's attempt to serve Jinhua under FRCP 4(f)(2) where the Hague Convention
 6 is in place and Micron has made no attempt to perfect its service under the Hague Convention, is
 7 improper.

8 Micron may attempt to argue that service was proper because the FedEx mailings were sent
 9 to Jinhua's executive at his Taiwan residence and at UMC's place of business in Taiwan, which
 10 permits service "by international registered mail/return receipt requested."⁴ *See Taiwan*, U.S.

11 DEPARTMENT OF STATE — BUREAU OF CONSULAR AFFAIRS,
 12 <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Taiwan.html>
 13 (last visited Sept. 30, 2018). That argument, however, is incorrect. Jinhua is a Chinese defendant.
 14 Zheng Decl., ¶¶3-5. Jinhua is neither incorporated in Taiwan nor a Taiwanese resident. Zheng Decl.,
 15 ¶¶2-5, 12. As such, whether Jinhua was effectively served by a foreign party should be determined
 16 by the laws of China, not the laws of Taiwan. *See Cucuz v. Rosta Int'l Ltd.*, 2017 U.S. Dist. LEXIS
 17 76367, at *17-18 (E.D. Mich. May 19, 2017) (indicating that service on a foreign corporation should
 18 be effectuated in either the place of incorporation or principal place of business).

19 Moreover, even under FRCP 4(f)(2), Micron's attempted service fails because China and
 20 Taiwan prohibit service unless performed by a domestic court official. Xu Decl., ¶¶3, 4; *see also*

21 ³ China also prohibits "serv[ing] a party by serving the party's manager's home address or the party's
 22 manager when the manager is at a third party's address." Xu Decl., ¶¶3, 4. As such, even under
 23 FRCP 4(f)(2)(C)(ii), Micron's service is improper because its method of sending FedEx packages to
 24 Chen at his residence and UMC's business address in Taiwan is prohibited by China's laws.

25 ⁴ Where service may be effectuated in two countries that are both signatories to the Hague
 26 Convention, district courts have found that "[t]he country in which service is being made is the
 27 country whose laws must be obeyed, not the country of origin of the person or corporation being
 28 served." *See Marcantonio v. Primorsk Shipping Corp.*, 206 F. Supp. 2d 54, 58 (D. Mass. 2002); *see also* *Murtech Energy Servs., LLC v. ComEnCo Sys.*, 2014 U.S. Dist. LEXIS 85502, at *21 (E.D. Mich. June 24, 2014). Here, this does not apply because Taiwan, unlike China, is not a signatory to
 the Hague Convention. Where service may be accomplished pursuant to the Hague Convention,
 compliance with the Hague Convention is mandatory unless alternative service is granted. *See* *Codigo Music, LLC*, 2017 U.S. Dist. LEXIS 160747, at *27-28.

(Footnote Cont'd on Following Page)

1 Moore Decl., Ex. C, Articles 123 and 124 of the Taiwanese Code of Civil Procedures. Where Taiwan
 2 allows service by mail from foreign clerks, such service must be directed to a Taiwanese defendant
 3 or ordered by the court to be effective.⁵ Here, Micron's use of FedEx, a private courier, was not
 4 performed by or at the direction of a Chinese or Taiwanese court official. Micron did not seek this
 5 court's permission to use FedEx, and Jinhua is not a Taiwanese corporation. As such, Micron's
 6 attempt to serve Jinhua is improper under FRCP 4(f)(2)(C)(ii).

7 **B. LACK OF PERSONAL JURISDICTION (FRCP 12(b)(2))**

8 **1. Jinhua Has No Contacts With California To Support General Jurisdiction**

9 This Court can only exercise general jurisdiction over an out-of-state defendant where a
 10 defendant's contacts are so "continuous and systematic" that it is "essentially at home in the forum
 11 State" and could reasonably foresee being sued in that state. *Goodyear Dunlop Tires Operations,*
 12 S.A. v. *Brown*, 564 U.S. 915, 919 (2011). It cannot be disputed that Jinhua does not have any general
 13 contacts with California, much less anywhere else in the United States for the following reasons.

14 Jinhua is a limited liability corporation founded in Mainland China in early 2016. Zheng
 15 Decl., ¶3. Jinhua is a state-owned enterprise ultimately controlled by Fujian Province with a principal
 16 place of business at No. 88, Lianhua Avenue, Integrated Circuit Science Park, Jinjiang City,
 17 Quanzhou City, Fujian Province, China, 362200. *Id.*, ¶¶4, 5. Jinhua has not purposely done any
 18 business in the state of California, or anywhere in the United States. *Id.*, ¶7. Jinhua has not actively
 19 or constructively been licensed to do business in California, or anywhere in the United States. *Id.*,
 20 ¶8. Jinhua does not have a registered agent authorized to accept service on its behalf, in California,
 21 or anywhere in the United States. *Id.*, ¶9. Jinhua does not make, sell, import, market or promote any
 22 product in California, or anywhere in the United States. *Id.*, ¶10. Jinhua does not own, rent, lease or

23
 24 ⁵ Indeed, in these instances, service was directed to a Taiwanese corporate defendant, which Jinhua
 25 is not. See, e.g., *Fujitsu Ltd. v. Nanya Tech. Corp.*, 2007 U.S. Dist. LEXIS 13132, at *12-13 (N.D.
 26 Cal. Feb. 9, 2007) (finding that "[b]ecause Taiwan is not a party to the Hague Convention, [FRCP
 27 4(f)(1)] is not of use" for purposes of serving Taiwanese defendants); *Power Integrations, Inc. v. Sys.
 28 Gen. Corp.*, 2004 U.S. Dist. LEXIS 25414, at *2-3 (N.D. Cal. Dec. 7, 2004) (where the serving party
 filed a request with the Clerk of Court to perfect service to a Taiwanese corporation via FedEx prior
 to mailing); *Trueposition, Inc. v. Sunon, Inc.*, 2006 U.S. Dist. LEXIS 39681, at *2-3 (E.D. Pa. June
 14, 2006) (where the defendant was a Taiwanese corporation); *Emery v. Wood Indus.*, 2001 U.S. Dist.
 LEXIS 12914, at *1-2 (D.N.H. Aug. 20, 2001) (same).

1 possess any real or personal property in California, or anywhere in the United States. *Id.*, ¶11. All
 2 real and personal property owned, rented, leased, possessed or controlled by Jinhua is located in
 3 Mainland China. *Id.*, ¶12. Jinhua does not maintain any bank accounts in California, or anywhere in
 4 the United States and does not pay taxes in California, or anywhere in the United States. *Id.*, ¶¶13,
 5 19). Jinhua does not maintain employees, officers, directors, or representatives in California, or
 6 anywhere in the United States. *Id.*, ¶14. Jinhua maintains no manufacturing or sales facilities in
 7 California, or anywhere in the United States. *Id.*, ¶15. Jinhua does not have any shareholders or
 8 members residing in California. *Id.*, ¶16. Jinhua does not maintain a physical address, mailing
 9 addresses, telephone numbers or fax numbers in California, or anywhere in the United States. *Id.*,
 10 ¶17. Jinhua does not travel to California by way of salespersons, or anywhere in the United States.
 11 *Id.*, ¶18. Jinhua does not visit potential customers in California, or anywhere in the United States.
 12 *Id.*, ¶20.

13 Given these facts, Jinhua does not possess the requisite continuous and systematic general
 14 business contacts for it to be considered “essentially at home” in California as required for this Court
 15 to exercise general personal jurisdiction over Jinhua.

16 **2. Jinhua Has No Contacts With California To Support Specific Jurisdiction**

17 Micron’s only claim that this Court has specific personal jurisdiction over Jinhua is based on
 18 one isolated event: Jinhua’s attendance at a job fair hosted by CASPA in October 2016 in Santa Clara,
 19 California and the posting of a job opening on the CASPA website. Complaint, ¶¶17, 35. This one
 20 event is insufficient to establish specific personal jurisdiction for several reasons. First, Micron
 21 presents no evidence that Jinhua attended the CASPA job fair to specifically recruit California
 22 residents. Jinhua asserts that its intention to attend the CASPA job fair was generally focused on
 23 attracting Chinese graduates in the United States. Zheng Decl., ¶27. Thus, the location of the job fair
 24 in California, which Jinhua had no control over, is the only evidence of contact with the forum.
 25 Moreover, the CASPA job fair, was a one-time event, with only two representatives from Jinhua in
 26 attendance. *Id.*, ¶29.

27 Second, with respect to the job posting that Jinhua made on the CASPA website, Micron
 28 presents no evidence that the website was specifically directed to California and its residents.

1 Although the CASPA job fair may have been held in California, Jinhua's job posting on the CASPA
 2 website, which is accessible nationwide, does not establish that Jinhua was specifically seeking
 3 potential hires from California. *Rio Props. v. Rio Int'l Interlink*, 284 F.3d 1007 (9th Cir. 2002) (noting
 4 that to establish specific jurisdiction based on internet contacts, plaintiff must show that the
 5 "objectionable webpage" was aimed intentionally at the forum state); *De Leon v. KBR, Inc.*, 2012
 6 U.S. Dist. LEXIS 64738, at *27 (D. Haw. May 8, 2012) (finding that a recruiting website that was
 7 available to any and all people located nationwide and throughout the world was not enough for the
 8 court to confer specific personal jurisdiction over the defendant without more).

9 Even if Jinhua's attendance at the CASPA job fair is sufficient to satisfy the first prong in the
 10 specific jurisdiction analysis (which Jinhua submits is not), Micron has not demonstrated that its
 11 claims "arise out of or relate to" Jinhua's attendance at the job fair. Specifically, Micron has failed
 12 to show how Jinhua's actions at the CASPA event constituted trade secret misappropriation and "steps
 13 in furtherance of the conspiracy in the United States." Complaint, ¶35. Indeed, Jinhua's participation
 14 in the CASPA event has no relation whatsoever to the trade secret misappropriation and RICO claims
 15 in the Complaint. The only allegations in the Complaint that conceivably could be construed as
 16 supportive of the second prong, are conclusory, unsupported and speculative allegations. For
 17 example, Micron alleges that the roadmap that UMC and Jinhua presented at the job fair "which
 18 would tend to assuage any concerns of job candidates that the project was distant or speculative,
 19 would not be possible without the use of stolen trade secrets." Complaint, ¶36. However, this
 20 allegation is purely speculative and, in any event, has no connection whatsoever to the trade secret or
 21 the RICO violations alleged in the Complaint. Notably, Micron only makes conclusory allegations
 22 in its Complaint that the acts of misappropriation were "encouraged and directed by UMC, Chen and
 23 Jinhua." Complaint, ¶34.

24 Micron also alleges that UMC and Jinhua's slides at a presentation at the CASPA job fair
 25 referred to two DRAM products as "F32" and "F32S," which Micron alleges were the "exact internal
 26 codenames of DRAM products developed and designed by Elpida (later acquired and owned by
 27 Micron). . . ." Complaint, ¶36. However, Micron does not even allege that those codes even
 28 constituted trade secrets or that they were allegedly misappropriated by UMC and/or Jinhua. *Id.*

Given this, Micron has failed to show it would not have suffered any injury “but for” Jinhua’s attendance at the CASPA job fair and can neither support its jurisdictional grounds, much less its substantive claims. In fact, Micron did not suffer any injury arising out of Jinhua’s attendance at the CASPA job fair because Micron employees were not the target of Jinhua’s job efforts there, no Micron employees applied for jobs at Jinhua at the event and no Micron employees were hired as a result of the event. Zheng Decl., ¶¶27, 30-32. Moreover, Chen, was acting on behalf of UMC, rather than Jinhua, and did not speak to any Micron employees at the job fair, and received no inquiries from Micron employees in response to the job fair. *Id.*, ¶30.

To the extent Micron alleges facts other than those related to the CASPA job fair in support of its claim that specific jurisdiction is appropriate over both UMC and Jinhua in this case, these facts are not applicable to Jinhua. For example, Micron alleges that before leaving MMT, Kenny Wang used his MMT-issued laptop to access electronic records containing Micron trade secrets, and then transferred those files to a USB storage device and to his online Google Drive cloud storage account. Complaint, ¶27. This fact is not applicable to Jinhua because Mr. Wang was an employee of UMC, not Jinhua. Zheng Decl., ¶22. Moreover, many of the other facts alleged by Micron against UMC also are not applicable to Jinhua. For example, Jinhua has no contracts, such as a non-disclosure agreement, or any interactions with Micron, and Jinhua does not have any sales in the United States. Moreover, Jinhua does not have a subsidiary or office in California or the United States. There simply has been no activity by Jinhua in the United States that ties to the allegations in the Complaint relating to a project in Taiwan and China.

3. Exercising Jurisdiction Over Jinhua In California Is Unreasonable

Even if the Court were to find that it has personal jurisdiction over Jinhua, the Court should still grant Jinhua’s motion to dismiss because under the Ninth Circuit’s precedent, specific jurisdiction over Jinhua in this case would be unreasonable, and therefore, unconstitutional.

First, Jinhua’s alleged contacts with California do not constitute “purposeful interjection.” To the extent Jinhua’s attendance at the CASPA job fair could even constitute “purposeful interjection,” it was a single act limited in time and scope, had no connection with or effect on Micron, and is unrelated to any of the claims in this case. Similarly, just because the CASPA job fair was located

1 in California, Jinhua did not attend the event because it sought to recruit potential hires it knew to
 2 be residents of the forum. Rather, Jinhua was focused on attracting Chinese students with prior
 3 experience in DRAM technology – regardless of their residency. Zheng Decl., ¶27. Not only did
 4 Jinhua not purposefully interject itself into California, it did not purposefully interject itself into the
 5 U.S. market either. Moreover, Jinhua does not have any sales from the United States or have any
 6 subsidiaries or offices in the United States, both of which are facts that courts have found are
 7 insufficient to support the type of attenuated jurisdictional theory Micron is attempting to spin in this
 8 case. *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014) (rejecting
 9 the exercise of general jurisdiction over foreign corporations based on the presence of an in-state
 10 subsidiary or affiliate); *Bogart LLC v. Corinthian, Inc.*, 2012 U.S. Dist. LEXIS 199509, at *6 (C.D.
 11 Cal. May 3, 2012) (finding that no sales to forum was insufficient to give rise to either general or
 12 specific jurisdiction).

13 Second, it would be significantly burdensome for Jinhua to defend this action because
 14 California is more than six-thousand (6,000) miles away from China – Jinhua’s base of operations.
 15 Representatives from Jinhua do not frequently travel to California, much less the United States.
 16 Moreover, Jinhua neither has any agents or subsidiaries in the United States nor has been involved in
 17 litigation in the United States other than the instant case. Although the CASPA job fair took place in
 18 this forum, this event alone did not give rise to Micron’s claims. Rather, it is clear that Micron’s
 19 claims were the result of other alleged key events all taking place outside of the United States. Third,
 20 this Court’s exercise of jurisdiction in California conflicts with the sovereignty of China, Jinhua’s
 21 state of domicile. The Ninth Circuit has held that this factor favors the party opposing the exercise
 22 of jurisdiction when such party does not have an agent in the United States, or any office or affiliate
 23 in this Country. *Roth v. Garcia Marquez*, 942 F.2d 617, 620 (9th Cir. 2011).

24 Fourth, California has no interest in the dispute inasmuch as Micron is a corporation based in
 25 Boise, Idaho, Jinhua is a non-US corporation, and California residents could have little, if any, interest
 26 in hearing a conspiracy and trade secret misappropriation suit between non-California companies.
 27 Micron obviously has more appropriate forums available to it which would have a greater interest in
 28 resolving the dispute, such as China and/or Taiwan. There is simply no benefit to the implicated

1 states to have the matter adjudicated, under federal law, where little to no aspect of the controversy
2 took place. Fifth, this forum will not provide the litigants with better access to proof and, therefore,
3 will not result in a more efficient resolution of the case. Here, most, if not all of the Jinhua witnesses
4 and the evidence are located in Taiwan or China. All Jinhua employees reside outside of the United
5 States. In fact, most, if not all, reside in Mainland China. Similarly, any evidence relevant to Jinhua
6 is located in China, not California, much less anywhere else in the United States.

7 Finally, there is no reason to believe that this is the only forum that can offer convenient and
8 effective relief for Micron. China would offer more convenient and effective relief as well as provide
9 an adequate alternative forum for Micron to bring its claims against Jinhua. It is clear that Micron
10 cannot support either its jurisdictional or substantive claims under U.S. law, and as a result, Micron
11 should consider bringing its claims between MMT and Jinhua in China.

12 **V. CONCLUSION**

13 For the reasons set forth herein, Jinhua respectfully requests that the Court dismiss the
14 Complaint for lack of insufficient service of under the FRCP 12(b)(5) (without prejudice) and lack of
15 personal jurisdiction under FRCP 12(b)(2) (with prejudice).

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3 Dated: October 2, 2018

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